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Attorneys for Defendants State of Oregon, Oregon State Police, Governor Kate Brown, Travis Hampton, Trooper #1 and Trooper #2

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

D. JEANETTE FINICUM; THARA TENNEY; TIERRA COLLIER; ROBERT FINICUM; TAWNY CRANE; ARIANNA BROWN; BRITTNEY BECK; MITCH FINICUM; THOMAS KINNE; CHALLICE FINCH; JAMES FINICUM; DANIELLE FINICUM; TEAN FINICUM; and the ESTATE OF ROBERT LAVOY FINICUM,

Case No. 2:18-cv-00160-SU

DECLARATION OF JAMES S. SMITH IN SUPPORT OF STATE DEFENDANTS' OBJECTIONS TO FINDINGS AND RECOMMENDATION

Plaintiffs,

v.

UNITED STATES OF AMERICA;  
FEDERAL BUREAU OF INVESTIGATION;  
BUREAU OF LAND MANAGEMENT;  
DANIEL P. LOVE; SALVATORE LAURO;

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OBJECTIONS TO FINDINGS AND RECOMMENDATION

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GREG T. BRETZING; W. JOSEPH ASTARITA; SPECIAL AGENT BM; MICHAEL FERRARI; STATE OF OREGON; OREGON STATE POLICE; TRAVIS HAMPTON; TROOPER 1 TROOPER 2; KATHERINE BROWN; HARNEY COUNTY; DAVID M. WARD; STEVEN E. GRASTY; and the CENTER FOR BIOLOGICAL DIVERSITY,

Defendants.

I, James S. Smith, hereby declare:

1. I am a Senior Assistant Attorney General with the Oregon Department of Justice and make this Declaration in support of the State Defendants' Objections to the Findings and Recommendation.

2. On March 1, 2019, I was diagnosed with colorectal cancer. At a scheduling conference, I reported my illness and the anticipated treatment to Magistrate Judge Sullivan, who graciously adjusted the court's schedule to allow for the filing of the state defendants' Motion to Dismiss after my expected return to work in August 2019.

3. Unfortunately, my cancer was more advanced than had been anticipated. Originally, it was anticipated that I had Stage 1 or Stage 2 cancer that would be treated with surgery only. After the surgery, it was learned that my cancer was Stage 3A, for which the treatment includes chemotherapy, which would begin in June 2019, and continue into October. Rather than ask the court for more time (the case was already progressing painfully slowly), I discussed the issue with DOJ management and convinced them that I would be fit enough to prepare the state defendants' Motion to Dismiss in August, without the need to involve other Assistant Attorneys General. I was wrong about my fitness; although I was able to piece together a document and get it timely filed, I missed an obvious issue concerning the timeliness

of plaintiffs' state law claims. As a result, that issue was never addressed before Magistrate Judge Sullivan. The fault is mine alone; I apologize to the court and counsel for my oversight.

4. The issue is an issue of law, for which no further factual development is necessary. The court's electronic file already includes all relevant facts needed to decide the timeliness of the state law claims. Plaintiffs suffer no prejudice, because the state defendants could raise this issue in the next round of pleading motions or as a motion for summary judgment; it is simply more efficient to have the issue considered now.

**I declare under penalty of perjury that the foregoing is true and correct.**

EXECUTED on January 29, 2021.

*s/ James S. Smith*  
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JAMES S. SMITH  
Senior Assistant Attorney General